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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

UM CORPORATION, a Japanese corporation,

Plaintiff,

vs.

TSUBURAYA PRODUCTIONS CO. LTD., a Japanese corporation,

Defendant.

CASE NO. 2:15-cv-03764-AB-AJW

DECLARATION OF MANU RAKWATTANAKUL IN SUPPORT OF TSUBURAYA'S OPPOSITION TO UMC's MOTION FOR JUDGMENT ON THE PLEADINGS OR, IN THE ALTERNATIVE, SUMMARY JUDGMENT

Trial Date: August 22, 2017

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TSUBURAYA PRODUCTIONS CO. LTD., a Japanese corporation,

Counterclaimant,

vs.

UM CORPORATION, a Japanese corporation; ULTRAMAN USA, INC., a California corporation; SOMPOTE SAENGDUENCHAI, a Thai individual; GOLDEN MEDIA GROUP, INC., a California corporation; TIGA ENTERTAINMENT COMPANY, LTD., a Hong Kong corporation; and DOES 1-10,

Counterdefendants.

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DECLARATION OF MANU RAKWATTANAKUL

I, Manu Rakwattanakul, declare as follows:

1. I am an attorney duly authorized to practice law in Thailand and a partner at Baker & Mackenzie, Ltd., in Bangkok. I make this declaration of personal, firsthand knowledge, and, if called and sworn as a witness, I could and would testify competently thereto.

2. Since December 1997, I have represented Tsuburaya Productions Co. Ltd. ("Tsuburaya"), the creator of the "Ultraman" character, in various civil and criminal proceedings in the courts of Thailand. In these proceedings, Tsuburaya has been adverse to Sompote Saengduenchai ("Sompote"), who is a resident of Thailand, and companies affiliated with him. Following is a summary of the various lawsuits in Thailand involving Ultraman in which I have participated as counsel for Tsuburaya.

Thai Lawsuit No. 1:

3. On December 16, 1997, Tsuburaya filed a criminal case and a related civil case in Thailand against Sompote and other defendants, including Sompote's company called Tsuburaya Chaiyo Co., Ltd., and Sompote's son, Perasit Saengduenchai, alleging that the defendants had violated Tsuburaya's copyrights in the Ultraman works by distributing those works in Thailand without Tsuburaya's authorization.[1] In response to this claim, Sompote asserted that he jointly created the

[1] In Thailand, civil litigants can bring claims for civil relief (like damages) and criminal relief (like incarceration or fines) in a single lawsuit. Civil and criminal requests for relief are generally evaluated under different standards of proof. In that event, conclusions of fact by the Court in a civil claim shall follow the conclusions of fact in the criminal charge. In addition, in trying civil claims, provisions of the (footnote continued)

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Ultraman character with the founder of Tsuburaya in or around 1963-1964 in Japan. Sompote also asserted that on March 4, 1976, he was assigned all the various rights relating and pertaining to the Ultraman works based on the Ultraman character, in order to exploit those works in Thailand and all other countries outside of Japan through a license agreement allegedly signed by Noboru Tsuburaya, Tsuburaya's president at the time (the "1976 Agreement"). Sompote submitted the 1976 Agreement to the Thai court in support of his position.

4. On April 4, 2000, the Thai Intellectual Property and International Trade Court ("Central IP&IT Court") ruled that Tsuburaya is the sole owner of the Ultraman copyright. However, the Court admitted (or concluded) that the 1976 Agreement is valid and therefore dismissed Tsuburaya's claims. Tsuburaya appealed that ruling to the Thai Supreme Court.

5. On June 15, 2000, Tsuburaya filed its appeal of the Central IP&IT Court's decision in the Thai Supreme Court. On November 14, 2007, in a decision handed down by the Central IP&IT Court on February 5, 2008, the Thai Supreme Court[2] issued its ruling which rejected Sompote's allegation that he was the joint creator of the Ultraman character, and also held that the 1976 Agreement was a falsification and had been forged, and that Sompote therefore did not have rights to exploit any Ultraman works under the 1976 Agreement.[3]

Civil Procedure Code shall be applied. Judgments for civil relief and criminal relief will normally be issued in a single document.

[2] The Thai Supreme Court typically sits as a panel of three judges, representing a quorum. There are several dozen judges who may sit on a panel of the Thai Supreme Court. The Supreme Court cases discussed in this declaration were heard by various different judges from the Thai Supreme Court.

[3] In Thailand, it is not unusual for appeals to the Thai Supreme Court to take several years to be resolved.

6. A true and correct copy of a certified English translation of the November 14, 2007 Thai Supreme Court decision, which was prepared at my direction, is attached as **Exhibit A**.

7. In reaching its decision that the 1976 Agreement was a forgery, the Thai Supreme Court relied upon a number of different types of evidence to support its conclusion, including the following [at pages 37 to 41]:

a. The Court found it "very unusual" that Sompote did not exercise his alleged rights under the 1976 Agreement or even show the document to anyone until May 1996, about one year after Noboru Tsuburaya had died and 20 years after the date of the alleged agreement.

b. The Court noted that in 1984, Sompote asked for and obtained permission from Tsuburaya to produce a movie entitled "Hanuman and the Eleven Ultraman," and paid for the right to do so, which would not have been necessary had the 1976 Agreement been effective as of that time.

c. The Court noted that during the time when the 1976 Agreement was allegedly effective, including in the months after the March 4, 1976 date of alleged execution, Tsuburaya engaged in substantial licensing and other commercial activities regarding Ultraman that would have barred by the 1976 Agreement had it been effective.

d. The Court also relied on the conclusion of a committee of seven experts in document forgery verification that was appointed by the Commander of the Scientific Crime Detection Division of the Royal Thai Police (the "Committee"). In its Signature Verification Report dated January 10, 2000, the Committee stated its unanimous opinion that the signature on the 1976 Agreement and Mr. Noboru Tsuburaya's signature in various sample documents were different in writing styles, characteristics of letters and patterns, and were not from the same person. A true and

correct copy of a certified English translation of the January 10, 2000 Signature Verification Report, which was prepared at my direction, is attached as **Exhibit B**. The Court also noted that the Committee's conclusion that the signature on the 1976 Agreement was not genuine corresponds to the opinion of Mr. Akira Amano, who was a handwriting expert from Japan and another of Tsuburaya's witnesses who also conducted an analysis and concluded that the signature on the 1976 Agreement was suspect.

e. The Court identified several other "suspicions" in the 1976 Agreement that supported its conclusion that it was falsified, including that (i) it would have been "highly unusual" for Noboru Tsuburaya to, as Sompote alleged, have granted Sompote broad rights in the Ultraman works, including the rights to create new Ultraman works, with nothing in return and for an indefinite period, (ii) there was no witness to the signing of the agreement, which is particularly unusual given how important the agreement would have been to Tsuburaya's business, (iii) the name of the company as stated on the agreement—"Tsuburaya Prod. and Enterprise Co., Ltd."—was not the actual name of any Tsuburaya company, and (iv) the spellings of certain of the movie titles listed on the agreement were wrong, and there were other errors respecting the identification of these movies.

Thai Lawsuit No. 2:

8. In 2002, Sompote filed a defamation lawsuit against Mr. Sampote Thianthong, a public-relations agent of Tsuburaya in Thailand, and Pro-Link Co., Ltd., a distributor of Ultraman works in Thailand, on the grounds that the defendants had defamed his reputation by sending a letter to the Thai Department of Environmental Quality Promotion ("DEQP") asking it to cancel an invitation for Sompote to display an Ultraman work at an event staged by the DEQP on the grounds that the work was an unauthorized adaptation of an Ultraman work owned

by Tsuburaya. Sompote argued that the defendants had committed defamation because, contrary to their statements to the DEQP, he had rights to exploit Ultraman under the 1976 Agreement.

9. The Court of First Instance found the defendants guilty of defamation, and the defendants appealed. The Court of Appeal reversed the decision of the Court of First Instance, and then Sompote appealed to the Thai Supreme Court.

10. On October 26, 2011, in a decision handed down by the Dusit District Court on March 8, 2012, the Thai Supreme Court ruled that, based on the final judgment of the Thai Supreme Court in Thai Lawsuit No. 1 (discussed above), Tsuburaya was the creator of Ultraman, the 1976 Agreement was a forged document, and Sompote therefore had no rights to exploit any benefits from Ultraman works. Therefore, the Court deemed that Sompote falsely claimed that he was a co-creator and cited the forged document in bad faith. Sompote, was therefore not an injured person and had no legal standing to file the lawsuit from the beginning. Thus, Sompote's charge was dismissed. A true and correct copy of a certified English translation of the October 26, 2011 Thai Supreme Court decision, which was prepared at my direction, is attached as **Exhibit C.**

Thai Lawsuit No. 3:

11. On August 3, 2004, Tsuburaya filed a civil claim for trade-name infringement against Sompote's company Tsuburaya Chaiyo Co., Ltd. ("Tsuburaya Chaiyo"). Tsuburaya alleged that Tsuburaya Chaiyo had no right to use the name "Tsuburaya" as part of its company name, and it sought relief including damages and an order requiring Tsuburaya Chaiyo to stop using that name.

12. On May 14, 2007, the Central IP&IT Court ruled in favor of Tsuburaya on the grounds that Sompote had never been given permission to use the name

"Tsuburaya," and that the 1976 Agreement does not provide any such permission. At the time of delivering this judgment, the Thai Supreme Court in Lawsuit No. 1 had not handed down its decision. Therefore, the Central IP&IT Court relied upon the outcome of the decision of the Central IP&IT Court in Lawsuit No. 1, which was still binding on the parties at that time. However, the Central IP&IT Court in this case concluded that the 1976 Agreement was merely a licensing agreement, and that Tsuburaya was still the copyright owner of the Ultraman character and Ultraman works. The rights received by Sompote were only limited under the 1976 Agreement. The right in respect of the trade mark under the 1976 Agreement was only to use the trademark related to the movies specifically identified in that Agreement, which does not include the trade name "Tsuburaya." The court therefore ordered Tsuburaya Chaiyo to pay damages and prohibited it from using the name "Tsuburaya."

13. On August 8, 2007, Tsuburaya Chaiyo appealed the ruling to the Thai Supreme Court. On June 17, 2014, in a decision handed down by the Central IP&IT Court on December 2, 2014, the Thai Supreme Court ruled largely in favor of Tsuburaya, including on the issue of trade-name infringement. The Court concluded that the 1976 Agreement was a forged document such that it is not admissible to show that Tsuburaya had allowed Sompote to use the name "Tsuburaya" as claimed.[4] The Supreme Court in this case, which was a different panel from Lawsuit No. 1, relied on some facts which were already alleged by Sompote in Lawsuit No. 1. The Supreme Court had already concluded that the 1976 Agreement was a forged document in Lawsuit No. 1.

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[4] On May 28, 2012, Tsuburaya Chaiyo was declared bankrupt by order of the Thai Central Bankruptcy Court.

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14. A true and correct copy of a certified English translation of the June 17, 2014 Thai Supreme Court decision, which was prepared at my direction, is attached as **Exhibit D**.

Thai Lawsuit No. 4:

15. On October 7, 2004, Tsuburaya filed a lawsuit against Sompote, Tsuburaya Chaiyo and other defendants for copyright infringement based on their unauthorized creation of new Ultraman characters and unauthorized licensing of Tsuburaya's new Ultraman works which were outside the movies under the 1976 Agreement. The defendants counterclaimed against Tsuburaya for copyright infringement claiming that while the ruling in Thai Lawsuit No. 1 (discussed above) was on review to the Thai Supreme Court, Tsuburaya had no right to exploit Ultraman characters outside of Japan, and that its doing so damaged them.

16. On April 2, 2007, the Central IP&IT Court ruled in favor of Tsuburaya, including on the grounds that the defendants had no rights to create new Ultraman characters or license the new Ultraman works which were outside the 1976 Agreement to various licensees in Thailand. The Central IP&IT Court's ruling in this case still recognized the binding authority of the Central IP&IT Court's decision in Lawsuit No. 1, since the Supreme Court in Lawsuit No. 1 was still reviewing Tsuburaya's appeal and had not rendered its decision at that time. The court ordered the defendants to pay damages, and dismissed the defendants' counterclaims.

17. On June 27, 2007, the defendants filed their appeal against the Central IP&IT Court's decision in the Thai Supreme Court, and on July 6, 2007 Tsuburya also filed cross-appeals against various rulings to the Thai Supreme Court. In his appeal, Sompote argued that he is the copyright owner of the Ultraman works as the

co-author and the assignee of the rights in the 1976 Agreement, and that he is not merely a licensee of the works identified in the 1976 Agreement.

18. On December 30, 2015, in a decision handed down by the Central IP&IT Court on June 14, 2016, the Supreme Court ruled in favor of Tsuburaya. A true and correct copy of a certified English translation of the December 30, 2015, Thai Supreme Court decision, which was prepared at my direction, is attached as **Exhibit E**.

19. In its ruling (**Exhibit E** at 18-19), the Supreme Court affirmed the lower court's ruling that the defendants infringed Tsuburaya's copyrights in the Ultraman characters, including on the grounds that the new Ultraman works created by the defendants were not included in the 1976 Agreement. The Supreme Court also concluded that since the Supreme Court concluded in Lawsuit No. 1 that Tsuburaya was the copyright owner in Ultraman works by creation, and the 1976 Agreement was a forged document, the Supreme Court decision in Lawsuit No. 1 was conclusive and binding on Tsuburaya, Sompote and Tsuburya Chaiyo, which are the same parties under the law. The Court also affirmed the dismissal of the defendants' counterclaims and ordered the defendants to pay damages to Tsuburaya.

Thai Lawsuit No. 5:

20. On September 19, 2008, Tsuburaya filed a criminal lawsuit against Sompote and Tsuburaya Chaiyo based on their proffering to the Central IP&IT Court the forged 1976 Agreement and falsified testimony based on that agreement. On May 13, 2009, the Criminal Court (which is the court of first instance in criminal cases) dismissed the case, and on June 15, 2009, Tsuburaya appealed that ruling to the Court of Appeal. Tsuburaya could not file a direct appeal to the Supreme Court

because the Criminal Court is not a specialized court like the Central IP&IT Court, from which the law requires parties to file a final appeal directly to the Supreme Court. On April 17, 2012, the Court of Appeal reversed the Criminal Court decision and ordered the Criminal Court to proceed with a trial.

21. On June 30, 2014, the Criminal Court reviewed the evidence in the case after the trial, together with the evidence and Thai Supreme Court decision from Thai Lawsuit No. 1 (discussed above), and concluded that the 1976 Agreement was a forgery, and that the defendants conspired to commit the offenses alleged in the complaint. Sompote received a two-year jail sentence, which was suspended, and a fine, and Sompote was ordered to surrender the original copy of the 1976 Agreement. In this case, after the ruling of the Criminal Court, Tsuburya requested that the Criminal Court force Sompote to surrender the original copy of the 1976 Agreement to the Criminal Court by enforcing the judgment. In response, Sompote declared that he did not have the original copy and he could not surrender it.

22. On January 27, 2015, the defendants appealed the rulings to the Court of Appeal, and requested an order that Sompote is the assignee in the 1976 Agreement and that it was not falsified. On January 13, 2016, in a decision handed down by the Criminal Court on April 29, 2016, the Court of Appeal again considered the evidence that the 1976 Agreement was a forged document, and affirmed the decision of the Criminal Court, including the penalties imposed by the Criminal Court.

23. A true and correct copy of a certified English translation of the January 13, 2016 Court of Appeal decision, which was prepared at my direction, is attached as **Exhibit F**.

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24. The defendants filed a final appeal to the Supreme Court on July 26, 2016, stating that the 1976 Agreement was not a forged document and that they had no intention to commit a criminal offence. However, the Criminal Court, which is empowered under the law to review their appeal prior to sending it to the Supreme Court, found that their appeal on issues of fact was prohibited by law and thus declined permission to appeal. Therefore, this lawsuit was finalized.

Thai Lawsuit No. 6:

25. On October 9, 2008, Tsuburaya initiated a criminal case against Sompote and other defendants based on their conduct in forging a document called the "Amending License Granting Agreement, dated May 19, 2006 (the "Amended License Agreement"), which purported to be an amendment of the 1976 Agreement that extended the license to new Ultraman works created by Tsuburaya, which are outside the 1976 Agreement. Tsuburaya alleged that the defendants had forged the document and presented it to the Thai Office of the National Culture Commission for the purpose of requesting that the new Ultraman movies and TV series be approved, so that Sompote's licensee could claim that Sompote had already acquired the rights in the new Ultraman movies and TV movies from Tsuburaya and could sub-license those rights to it for producing VCDs and DVDs for sale in Thailand.

26. On February 1, 2009, the Criminal Court concluded that Sompote had forged the document and used it improperly as alleged by Tsuburaya, and that another defendant had conspired with TIGA Co., Ltd. ("TIGA," which was not a defendant) to commit offenses of using or citing documents to officials based on the forged document. Sompote was sentenced to 60 months imprisonment.

27. On July 24, 2013, the Court of Appeal, in a ruling handed down by the Criminal Court on September 20, 2013, reversed the decision of the Criminal Court ruling that Sompote had falsified the document but had not forged it, because the document did not contain a falsified signature of Tsuburaya. Tsuburaya appealed that ruling to the Thai Supreme Court.

28. On December 16, 2015, in a ruling handed down by the Criminal Court on April 29, 2016, the Thai Supreme Court affirmed the decision of the Court of Appeal on the grounds that Tsuburaya could not prove beyond a reasonable doubt that Sompote had forged the Amended License Agreement. The Supreme Court concluded that the evidence showed only that an employee of TIGA created the falsified Amended License Agreement on his own behalf.

Thai Lawsuit No. 7:

29. On May 8, 2008, Tsuburaya filed a case for copyright infringement against Sompote, Perasit, Tsuburaya Chaiyo, TIGA and others. Tsuburaya alleged infringement of Ultraman works for the period from March 1998 to May 2008, because during that period Tsuburaya found that there were additional copyright infringements committed by Sompote and other defendants. OnMarch 12, 2010, the Central IP&IT Court suspended the hearing of witnesses to determine a legal issue of whether the case was based on the same grounds as Thai Lawsuit No. 1 (discussed above), and on that basis on December 24, 2010, the Central IP&IT Court dismissed the case. On June 24, 2011, Tsuburaya appealed that ruling to the Thai Supreme Court on the grounds that the infringement issues in this lawsuit were not the same as in Thai Lawsuit No. 1.

30. On December 30, 2015, in a decision handed down by the Central IP&IT Court on April 19, 2016, the Thai Supreme Court reversed the lower court

decision on the grounds that the infringement issues in this case are different from the issues in Thai Lawsuit No. 1, as the grounds for copyright infringement in this case are based on a different period of time, and ordered the Central IP&IT Court to continue with the examination of witnesses (which have been scheduled for 2017). In reaching its decision, the Supreme Court in this case cited the outcome of the Supreme Court decision in Lawsuit No. 1 and analyzed the grounds of claim compared to the lawsuit in this case, before concluding that the grounds of claim in this case are not repetitions of Lawsuit No. 1.

UMC's Accusations of Improper Conduct

31. I understand that UMC has made an accusation that the ruling of the Thai Supreme Court in Thai Lawsuit No. 1 was "procured through bribery" based on the involvement of an attorney or representative for Tsuburaya. My understanding is that the attorney to whom UMC refers is Mr. Manas Kamnerd-ngarm, with the law firm of VISNU-MANUS AND ASSOCIATE CO., LTD,_located at 100/92 Vongvanij Complex B 27th Fl., Rama 9 Road, Huaykwang, Bangkok 10320. The affidavit submitted by UMC to support its accusation of "bribery" suggests that Mr. Manas' assistance to Tsuburaya was secretive and "behind the scenes."

32. Contrary to UMC's accusations, Mr. Manas is an attorney in Bangkok who was retained by Tsuburaya to work with my firm in preparing Tsuburaya's appellate brief to the Supreme Court in Thai Lawsuit No. 1. Mr. Manas signed the appellate brief on behalf of Tsuburaya. In the Supreme Court's ordered dated November 14, 2007 (**Exhibit A** at page 32), the Court concluded that Mr. Manas was duly empowered to act as the attorney for Tsuburaya in connection with its appeal. In addition to composing Tsuburaya's appellate brief and several additional

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briefs submitted to the Supreme Court, Mr. Manas and his lawyers' team made several appearances in Court on behalf of Tsuburaya.

33. I am not aware of any acts of "bribery" or other improper conduct by Mr. Manas on behalf of Tsuburaya.

34. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 11th day of August, 2016, at Baker & McKenzie Ltd, 22nd Floor, Abdulrahim Place, 990, Rama IV Road, Bangkok 10500, Thailand.

Manu Rakwattanakul

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